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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE PATENT TRIAL AND APPEALS
BOARD

Ex parte LOUIS L. NAGY, MARK K. KRAGE,
and ANDRZEJ M. PAWLAK

Appeal 2011-004314
Application 11/114,812
Technology Center 2800

Before CHARLES F. WARREN, JEFFREY T. SMITH, and
KAREN M. HASTINGS, *Administrative Patent Judges*.

HASTINGS, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellants seek our review under 35 U.S.C. § 134 of the Examiner's final decision rejecting claims 1-22 under 35 U.S.C. § 102(b) as anticipated by Braun (U.S. Patent No. 6,980,782 B1, issued Dec. 27, 2005), as well as also rejecting claims 12, 15-17, and 20 under 35 U.S.C. § 103(a) over the

combined prior art of Braun and Anderson (U.S. Patent No. 6,873,294 B1, issued Mar. 29, 2005). We have jurisdiction over the appeal under 35 U.S.C. § 6(b).

We AFFIRM.

Appellants do not separately argue any of the claims in the rejection of claims 1-22 as anticipated by Braun, and focuses the specific arguments on claim 1 (Br. 18-20). Accordingly we select independent claim 1 as representative:

1. An antenna arrangement, comprising:
 - an antenna circuit configured to at least one of receive and transmit radio frequency signals, said antenna circuit including at least two spaced apart feed points;
 - a signal feed circuit coupled with said antenna circuit through feed switches operable to independently selectively connect each of said antenna circuit feed points;
 - an antenna performance measuring device configured to receive radio frequency signals from said feed circuit and generate output signals in response thereto;
 - a performance-adjusting device including at least one of:
 - a variable impedance element disposed in one of said antenna circuit and said signal feed circuit; and
 - a switchable parasite element coupled to said antenna circuit;
 - an algorithm processor operative to receive, store and compare said output signals, and to generate control signals in response thereto; and
 - a switch controller operative to receive said control signals and to independently set said feed switches between open and closed settings as a function thereof.

All of the five other independent claims (Claims 6, 11, 16, 21, and 22) similarly recite an antenna arrangement with at least two spaced apart feed points and feed switches operable to selectively interconnect the feed points with a signal feed circuit.

ANALYSIS

We have reviewed each of Appellants' arguments for patentability. However, we determine that a preponderance of the evidence supports the Examiner's finding that the claimed subject matter of representative claim 6 is anticipated within the meaning of § 102 by Braun (Ans. 4). A preponderance of the evidence also supports the Examiner's rejection of claims 12, 15-17, and 20¹ within the meaning of § 103 (Ans. 6, 7).

Accordingly, we will sustain the Examiner's rejections of all the claims for essentially those reasons expressed in the Answer, including the Examiner's Response to Argument section, and we add the following primarily for emphasis.

"[T]he PTO must give claims their broadest reasonable construction consistent with the specification . . . Therefore, we look to the specification to see if it provides a definition for claim terms, but otherwise apply a broad interpretation." *In re ICON Health & Fitness, Inc.*, 496 F.3d 1374, 1379 (Fed. Cir. 2007) "[A]s applicants may amend claims to narrow their scope, a broad construction during prosecution creates no unfairness to the applicant or patentee." *Id.*

After consideration of the record before us, we are of the opinion that Appellants have not shown error in the Examiner's determination that the broadest reasonable interpretation of the claims encompass the antenna arrangement and control system of Braun (e.g., Ans. 3-6).

¹ It is noted that there are two claims each numbered 20 in the claims appendix.

Appellants' argument that Braun's antenna system is not "a selected feed system" (Br. 19) is not persuasive for reasons set out by the Examiner (Ans. *generally*). The Examiner reasonably found that the structure set out in Fig. 1 and 2 of Braun with spaced apart feed points and feed switches which also include "a (CPU) (23) to control algorithms and alter the antenna configurations state" is a self-selected feed system (Ans. 7). On this record, Appellants have not shown by persuasive technical reasoning or credible evidence that the structure set out in Fig. 1 and 2 of Braun does not perform (or is not capable of performing) the recited functions in Appellants' claims as explained by the Examiner (*id.*). Furthermore, limitations related to the functioning of a structural article (as claimed herein) do not directly limit the scope of the claim; they can only serve to limit the structures performing the functions. *See In re Schreiber*, 128 F.3d 1473, 1478 (Fed. Cir. 1997) and cases cited therein². Appellants admit that the MEMS switch devices of Braun are "switch devices that can be used in a self-structuring feed switch system" (Br. 20).

² Because the functional language may only serve to patentably differentiate a claimed apparatus by means of further limiting its structure, and the applicant is in a better position to provide evidence with regard to the structural differences resulting from the functional limitation, our reviewing court and its predecessors have developed a test for analyzing functional limitations with an assignment of burdens: Where there is reason to conclude that the structure of the prior art is inherently capable of performing the claimed function, the burden shifts to the applicant to show that the claimed function patentably distinguishes the claimed structure from the prior art structure. *See In re Schreiber*, 128 F.3d 1473, 1478 (Fed. Cir. 1997); *In re Hallman*, 655 F.2d 212, 215 (CCPA 1981); *In re Brown*, 459 F.2d 531, 535 (CCPA 1972).

The Examiner also maintains an obviousness rejection over claims 12, 15-17, and 20 based on Braun and Anderson (Ans. 6-7). Appellants do not present any specific further arguments for any of these claims, and merely concludes that Anderson “does not describe or suggest a self-selecting feed system” (Br. 22). This does not sufficiently point out any error in the Examiner’s alternative obviousness determination of these claims.

Accordingly, we affirm the Examiner’s anticipation rejection as to claims 1-22, as well as the obviousness rejection of claims 12, 15-17, and 20.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136.

ORDER
AFFIRMED

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